



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street

New York, NY 10007

February 24, 2023

By ECF

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

In light of Plaintiff's objection to this request, the application is granted in part. The initial pretrial conference scheduled for March 8, 2023, is adjourned to **March 22, 2023, at 4:00 P.M.** At that time, the parties shall call 888-363-4749 and use the access code 558-3333. The deadline for the parties to file the joint letter and proposed civil case management plan and scheduling order is extended to **March 15, 2023, at 12:00 P.M.** No further extensions will be granted absent extraordinary circumstances. Plaintiff's request for the Government to show cause why it should not be held in contempt was addressed in the Order at Dkt. No. 41.

The Clerk of Court is respectfully directed to close the motions at Dkt. Nos. 42 and 44.

Dated: February 27, 2023
New York, New York

Re: *Mescall v. Federal Bureau of Prisons, et al.*, No. 22 Civ. 4557 (LGS)

Dear Judge Schofield:

This Office represents the Bureau of Prisons ("BOP"), the BOP Chief Psychiatrist, and BOP Medical Director (collectively, the "Government"), in this lawsuit brought by *pro se* Plaintiff Sean Fitzgerald Mescall ("Plaintiff"). For the reasons explained herein, the Government respectfully asks this Court to adjourn the initial pretrial conference currently scheduled for March 8, 2023, *see* ECF No. 37, and to deny Plaintiff's request that the Court order the Government to show cause why it should not be held in contempt for failing to timely respond to the Amended Complaint, *see* ECF No. 42.

The reason for these requests is that the Government has not been properly served in this case. On September 21, 2022, the Court directed the Clerk of Court to issue summonses for all defendants and for the U.S. Marshals to effect service of summonses and the complaint on all defendants. *See* ECF No. 11. The private defendants appear to have been served on November 29, 2022. *See* ECF Nos. 15-18. BOP was served on or about January 5, 2023, ECF No. 40, but as of the date of this letter, neither this Office nor the Attorney General has been served, as required by Federal Rule of Civil Procedure 4(i)(1)-(2). This Office, however, has now received a copy of the Amended Complaint, and is willing to accept service as of the date of this letter, February 24, 2023. Accordingly, the Government's deadline to respond to the Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(a)(2), is in 60 days, on April 25, 2023.

The Government thus respectfully requests that the Court deny Plaintiff's request for the Government to show cause why it should not be held in contempt for failing to timely respond to the Amended Complaint, as the deadline for it to respond has not yet occurred. And the Government proposes that the initial pretrial conference (and the related deadline for the parties to submit a proposed Civil Case Management Plan and Scheduling Order), be adjourned until after it responds to the Amended Complaint. This is the Government's first request for an adjournment of the initial pretrial conference.

I thank the Court for its consideration of this request.

Respectfully,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/ Dana Walsh Kumar
Dana Walsh Kumar
Assistant United States Attorney
Tel.: (212) 637-2741
Dana.Walsh.Kumar@usdoj.gov

cc: Megan Jeane Muoio, Esq. (by ECF)
Michael E. Shay, Esq. (by ECF)

Sean Fitzgerald Mescall (by ECF and certified mail)
6 Paddock Place
Newburgh, NY 12550